

2 Ct

ORIGINAL

(28)
3/4/02
~UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DAVID KEBE

Petitioner,

IMMIGRATION AND NATURALIZATION
SERVICE

Respondent

:
:
: 1:CV-00-1883
:
: (Judge Kane)
:
:
:
:SUPPLEMENTAL BRIEFProcedural History

On August 2, 2001, the Petitioner filed a Motion for Relief from Judgment/Motion for Reconsideration. After both parties filed briefs, Petitioner filed an amended motion on November 8, 2001. On January 9, 2002 Petitioner filed a Motion for Judgement on his Motion for Reconsideration. On January 23, 2002, the Court issued an Order directing Respondent to complete a review of Petitioner's case as provided for in its interim procedures or to submit a supplemental brief concerning the likelihood of Petitioner's removal in the foreseeable future. Respondent filed a Motion for Enlargement of time which was granted. The Court directed Respondent to file a supplemental brief on or by March 8, 2002. This supplemental brief is filed in accordance with the Court's order.

FILED
HARRISBURG

MAR 01 2002

MARY E. D'ANDREA, CLERK
Per 9/8
DEPUTY CLERK

Argument

In compliance with the Court's order of January 23, 2002, the INS conducted a review of whether Petitioner would be removed in the foreseeable future. After conducting the review, the INS found that removal was foreseeable if Petitioner cooperates and that continued detention was recommended. The review reads in part:

Mr. Kebe has hindered his removal from the United States by refusing to give the Service accurate answers needed to obtain a travel document on his behalf from the proper government.

. . .

The Service routinely obtains travel documents from the majority of the nations located on the European and African continents, and it would be unlikely that the Service would be unable to remove Mr. Kebe if his true identity and nationality were truly known. (See attached Exhibit A)

While in INS custody Petitioner has actively hindered INS' attempts to obtain his travel papers by claiming that he is a native and citizen of several different countries, giving different names, and giving different dates of birth. If Petitioner cooperates, his removal will be possible within a reasonable amount of time.


The INS recommended continued detention because Mr. Kebe failed to prove that he would not pose a threat to the community nor become a risk of flight if released.

Conclusion

For the above-stated reasons, the Petitioner's Motion for Reconsideration should be denied.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney


MARY CATHERINE FRYE
Assistant United States Attorney
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, PA 17108-1754
(717) 221-4482

Date: March 1, 2002

EXHIBIT A



U.S. Department of Justice
Immigration and Naturalization vice

Philadelphia District

1600 Callowhill Street
Philadelphia, PA 19608

February 8, 2002

KEBE, David - A75 805 834
BCP (2002-0666) O-209
C/O Berks County Correctional Facility
1287 County Welfare Road
Leesport, PA. 19533

**Decision by District Director to Continue Detention
Upon Expiration of Removal Period**

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of the Immigration and Naturalization Service (INS) at this time. This decision has been made based on a review of your file and consideration of the information submitted to INS reviewing officials in support of your application for release.

After carefully weighing the factors pertaining to your case, you will not be released from the custody of the INS because: *You have actively hindered your removal from the United States for the following reasons: You have given the Service several different names, dates of birth, and places of birth since your detention with the Service. You have made prior statements that you were born in France, Sudan, and Senegal. You have stated on one occasion that your father was a diplomat, then on another occasion that your father was a Colonel in the Sudanese Military. You have not provided the Service with a valid or expired passport, or any type of evidence that you entered the United States legally. You have failed to provide the Service with a birth certificate, or any other documentation attesting to your country of origin.*

You have not through clear and convincing evidence proven that you would not pose a threat to the community, or become a risk of flight if released.

Therefore, it is the Service's decision that you remain in Service custody until such time as you cooperate with the Service in obtaining a travel document on your behalf.

Control of your custody case will be:

Transferred to the INS Headquarters Post Order Detention Unit. Your situation will be reviewed again by that unit within 30 days after it receives the case. They will send a notice to you when they schedule that review. Any material touching on your qualifications for release that you wish to have considered should be submitted to that office. You will find their address at the bottom of the next page.


Kenneth J. Elwood
Signature of District Director/Designated Representative

2/8/02
Date

FEB-26-2002 16:10

INS DISTRICT COUNSEL

215 656 7148

P.03/11

Decision to Continue Detention Upon Expiration of Removal Period
Page 3

Page 2

(KEBE, David - A75 805 834)

PROOF OF SERVICE

- (1) Personal Service (Officer to complete both (a) and (b) below.)**

(a) I David W. Savina – Deportation Officer

Name & Title of INS Officer

certify that I served David KEBE with a copy

Name of detainee

of this document at Berks County C.F. on 2/8/02, Through Institutional mail.
Institution *Date*

Institution

Date _____

- (2) **Service by certified mail, return receipt. (Attach copy of receipt)**

I _____, certify that I served

Name & Title of INS Officer

Name of detainee

an the custodian of records at

Institution

with a copy of this document by certified mail at on

Date _____

() CC: Attorney of Record or Designated Representative
(X) CC: A-File

(X) CC: A-File

ADDRESS FURTHER CORRESPONDENCE TO:
INS 5-6

INS Enforcement

801 I St. NW, Suite 801

Washington, D.C. 20536

Attn: Headquarters Post Order Detention Unit

**POST ORDER CUSTODY REVIEW WORKSHEET OR FILE REVIEW
AND/OR INTERVIEW****Detainee Name:** KEBE, David **Date of Birth:** 9/6/70 ?? **"A" Number:** A75 805 834**AKAs:** GIBBY, David; TEBE, David; PICKERING, Philip **BOP Number:** N/A**Country of Birth:** Unknown **Citizenship:** Unknown**Date of Arrival:** Claims 09/96 **Place of Arrival:** Claims New York**Manner of Arrival:** Claims F-1 Student **Last Date into INS Custody:** 02/11/99**Entered INS Custody from:** ☒ Local ☐ State ☐ Federal Institution
☐ Other**Location:****Institution Number:****Immigration History:** (Prior INS arrest[s]/parole/bond/custody information)

Describe: Subject claims to have entered the United States as an F-1 student, the Service has found no evidence of any entry into the U.S.

02/25/99 - Ordered Removed to France by IJ.
10/22/99 - Custody review (Detained).
03/10/00 - Custody review (Detained).
06/29/00 - Custody review HQPDU (Detained).
09/08/00 - custody review (Detained).
03/03/01 - Custody Review (Detained)**Deportation Officer:** David W. Savina**Date of Review:** February 5, 2002**Location Detained:** Berks County Correctional Facility
1287 County Welfare Road
Leesport, PA 19533**Deportation/Exclusion/Removal Proceedings****List all Charges:** ☒ Section 237 (a)(1)(C)(i),(2)(A)(ii)
☐ Section 212 (a)
☐ Section 241☒ Under Final Order dated: 02/25/1999 by ☒ IJ ☐ BIA ☐ Other☒ Appeal Waived/Appeal Time Elapsed

Travel Document Status/History: Subject has made several claims to be a citizen of France, Sudan, and possibly Senegal. Attempts to remove the subject to France and Sudan have been unsuccessful due to the subject's refusal to state where he was actually born.

The subject has claimed several different names, dates of birth, and nationalities since his arrival in Service custody.

Legal Representative / Attorney

G-28 Filed: ☐ Yes ☒ No

Legal Rep/Atty. Notified of Interview: ☐ Yes ☒ N/A by:
on:

Name of Representative / Attorney: N/A

Criminal History

Outside the United States: None found or claimed by subject
(specify nature of crime, whether convicted, sentence imposed, date, and country)

In the United States: Yes, See below

NCIC Checks: ☒ Criminal History (State and Federal) ☐ No record Found

FBI# 894548FB7

SID# NY8819479K

Summary of NCIC Checks:

02/08/98 – New York: Petit Larceny
Resisting Arrest
Possession of Stolen Prop.

Convicted: 06/11/98
Disorderly Conduct

05/06/98 – New York: Burglary 3°

No Disposition

06/16/98 – New York: Intent/Fraud Obtain Trans

Convicted: 06/16/98 Time Served

06/17/98 – New York: Intent/Fraud Obtain Trans

Convicted: 06/17/98 Time Served

07/21/98 – New York: Assault W/Int Cause Phy. Injury
Grand Larceny
Petit Larceny
Resisting Arrest
Criminal Poss. Stolen Prop.

Convicted: 07/21/98
Assault W/Int Cause Phy. Injury
5 days

08/30/98 – New York: Robbery 2° / Physical Injury
Assault W/Int Cause Phy Injury
Resisting Arrest

Convicted: 09/04/98
20 days/Order of Protection

01/26/99 – New York: Menacing 2° W/Weapon
Resisting Arrest
Disturbance Fight/Violence

Convicted: 01/26/99
30 Days / Order of Protection

Institutional / Disciplinary Record

Did the detainee have prior Disciplinary Reports?

☐ Yes

☒ No

If Yes, List & Describe: None found or claimed by subject

Disciplinary reports and Incidents while in INS Custody?

☒ Yes

☐ No

If Yes, List & Describe: 07/04/01 – Poss. of Contraband; 07/09/01 – Poss. of Contraband;
6/28/01 - Fighting

Specifics of Interview

Date of File Review: February 5, 2002

Date of Detainee Interview: Subject was not interviewed during this review

Location of Interview: N/A

Interviewing Officer:#1: N/A

#2: (optional)

Interpreter Used: ☐ Yes
Language/Dialect: ☐ No

Name:

Does the detainee have a place to live in the United States?

☒ Yes ☐ No

Address: Subject has stated in the past that he would be able to reside at: **Bellevue Men's Shelter 400 East 30th Street & 1st Avenue. Manhattan, NY (212) 481-4270**

Is the detainee subject to any parole or probation requirements?

☐ Yes ☒ No

Describe: None found in case file.

Does the detainee have close family ties within the United States?

☐ Yes ☒ No

Describe: None found or provided by subject.

Does the detainee have any community ties or non-governmental sponsors?

☐ Yes ☒ No

Describe: None found or provided by subject.

Does the detainee have any employment prospects?

☐ Yes ☒ No

Describe: No letter of employment found in file or provided by subject.

What is the detainee's employment history?

Describe: Subject claims to have sold merchandise (Curbside) in New York.

What is the detainee's educational level?

Describe: Unknown and not provided by subject.

Does the detainee have any vocational training?

☐ Yes ☒ No

Describe: Unknown and not provided by subject.

Medical/Psychological Concerns

Medical/Psychological Report : ☐ In A-File ☒ None ☐ Not Available

Date and Source:

Summary:

Other documentary evidence for consideration in this review:

Prior reviews
Disciplinary reports
NCIC Report
Consulate letters

Discussion at Interview

Notes: Subject was not interviewed during this review

The INS detainee was found ☐ CREDIBLE ☐ NOT CREDIBLE

Explain: This section is not applicable to this review.

Officer Comments/Analysis & Recommendation

On February 5, 2002, Mr. Kebe's case file was reviewed in order to determine if it is likely the Service will be able to obtain a travel document in order to remove the Subject from the United States.

The subject has stated that he last entered the United States in September of 1996 as an F-1 student from France. The Service has not been able to find any record of Mr. Kebe arriving as a student, or as any other arriving alien. On January 29, 1999 Mr. Kebe gave a statement to Officer Richard Koury of the INS, stating that he was born on September 9, 1966, and that his father was a diplomat from Senegal to the United States. In a later statement (enclosed) Mr. Kebe states that he was born in 1967, and that his father was a Colonel in the Sudanese Army. Mr. Kebe has made numerous contradicting statements concerning his family, what country he arrived from, what his true birth date is, what his true name is, and where he was born.

A Warrant of Removal was issued for Mr. Kebe on February 25, 1999 with travel document requests being sent from March of 1999 to the present. Both the French and Sudanese Government have stated that he is not a citizen of their perspective countries, and would not issue a travel document on his behalf. Mr. Kebe began filing Habeas cases on November 16, 1999, and has continued until the present.

Mr. Kebe has hindered his removal from the United States by refusing to give the Service accurate answers needed to obtain a travel document on his behalf from the proper Government. It is this writer belief the subject continues to give false information so he may obtain his release from "indefinite detention" through the filling of his Habeas cases continually. The Service routinely obtains travel documents from the majority of the nations located on the European and African continents, and it would be unlikely that the Service would be unable to remove Mr. Kebe if his true identity and nationality were truly known.

Therefore, it is this writers opinion that Mr. Kebe is actively hindering his deportation from the United Sates under Section 243(a) of the Immigration and Nationality Act, as amended and should remain in Service custody. Additionally, it is this writers recommendation that Mr. Kebe's case be referred to the District Attorney's office for prosecution under Title 18 United States Code.


Interviewing Officer: David W. Savina

2/5/02
Date:

☒ Detain

☐ Release


Reviewed by:

2/5/02
Date:

☒ Concur

☐ Do Not Concur

DISTRICT DIRECTOR'S CUSTODY DETERMINATION

- ☐ RELEASE FROM CUSTODY / ORDER OF SUPERVISION
- ☐ RELEASE FROM CUSTODY / ORDER OF SUPERVISION UNDER BOND

Bond Amount: _____

- ☐ CONTINUE IN CUSTODY / RETAIN CUSTODY DETERMINATION AUTHORITY FOR AN ADDITIONAL 90 DAYS AFTER REMOVAL PERIOD.
- ☒ CONTINUE IN CUSTODY / TRANSFER CUSTODY DETERMINATION AUTHORITY TO HQ PDU.

Comments (attach additional sheet(s) if necessary):

INS District Office:

Signature of District Director:
or of District Director's Designee

Phila PA
J P Sallem
J P Sallem DOM
(Printed Name & Title)

Date: 2/1/02

HEADQUARTER'S REVIEW OF CONTINUED DETENTION

Reviewing Officers

Concur

Reconsider

Date

(Name, Title, Signature)

(Name, Title, Signature)

(Name, Title, Signature)

For comments, please refer to the "Headquarters Post Order Custody Review" form.

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DAVID KEBE

Petitioner,

IMMIGRATION AND NATURALIZATION
SERVICE

Respondent

:
:
: 1:CV-00-1883
:
: (Judge Kane)
:
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:
:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

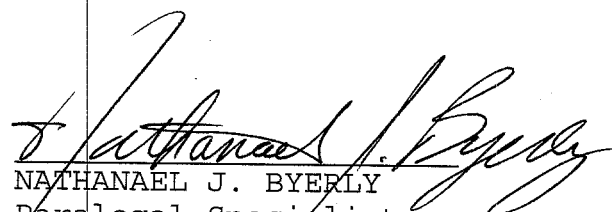
That on this 1st day of March, 2002, he served a copy of the attached

SUPPLEMENTAL BRIEF

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the places and addresses stated below, which is the last known addresses, and by depositing said envelope and contents in the United States Mail in Harrisburg, Pennsylvania.

Addressee:

David Kebe
Snyder County Jail
600 Old Colony Rd.
Selingsgrove, PA 17870-8610


NATHANAEL J. BYERLY
Paralegal Specialist
United States Attorney's Office

Dated: March 1, 2002